

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RICHARD LEE SIMKINS, III,	:	
Plaintiff,	:	
v.	:	Case No. 3:19-cv-227
CHRISTOPHER MCINTOSH, <i>et</i>	:	JUDGE WALTER H. RICE
<i>al.</i> ,	:	
Defendants.	:	

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATIONS (DOC. #73);
OVERRULING PLAINTIFF'S OBJECTIONS THERETO (DOC. #76);
OVERRULING AS MOOT, WITHOUT PREJUDICE TO REFILING,
MOTIONS TO DISMISS FILED BY DEFENDANTS CHRISTOPHER
MCINTOSH, D.O. (DOC. #34), JOSEPH BLAKE, M.D. (DOC. #39),
AND BRIAN LEWIS (DOC. #40)

On April 21, 2020, United States Magistrate Judge Michael J. Newman issued an Order and Entry granting *pro se* Plaintiff an extension of time, until June 4, 2020, to perfect service of process on Defendants. Doc. #73. In addition, he issued a Report and Recommendations recommending that the Motions to Dismiss for failure to perfect timely service, filed by Defendants Christopher McIntosh, D.O., Doc. #34, Joseph Blake, M.D., Doc. #39, and Brian Lewis, Doc. #40, be denied as moot without prejudice to refiling. He noted that other dispositive motions remain pending and not all named Defendants have been served.

Accordingly, Magistrate Judge Newman found good cause to delay the issuance of a scheduling order. Doc. #73.

On May 11, 2020, Simkins filed Objections to the Report and Recommendations, Doc. #76. He objects to the delayed issuance of a scheduling order and to the June 4, 2020, service deadline. The Court OVERRULES these Objections. It is premature to issue a scheduling order before all parties have been served. Simkins argues that setting a specific deadline for service will encourage Defendants to continue to evade service of process. He requests a further extension of 90-180 days, or indefinite tolling. The Court rejects these requests. Service must normally be completed within 90 days after the Complaint is filed. Fed. R. Civ. P. 4(m). This case has been pending since August 1, 2019, and Plaintiff has been given ample time. Unless he can show extraordinary circumstances, failure to perfect service by June 4, 2020, will result in the dismissal of the claims against the unserved defendants.

Based on the reasoning set forth by Magistrate Judge Newman in the Report and Recommendations, Doc. #73, as well as upon a thorough *de novo* review of this Court's file and the applicable law, the Court ADOPTS said judicial filing, and OVERRULES AS MOOT, without prejudice to refiling, the motions to dismiss filed by Defendants McIntosh, Blake and Lewis, Docs. ##34, 39, 40.

Date: May 11, 2020

/s/ Walter H. Rice (tp - per Judge Rice authorization after his review)

WALTER H. RICE

UNITED STATES DISTRICT JUDGE